IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

RSA.No. 872 of 2006()

AS.93/1998 of ADDL. DISTRICT COURT, PATHANAMTHITTA
OS.122/1995 of MUNSIFF COURT, RANNI

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APPELLANT : APPELLANT/IST DEFENDANT

JOSE VARGHESE, AGED 48 YEARS,
S/O.LATE VARGHESE, PAZHAMANNIL ALUMKAL HOUSE,
EDAMURI, CHETHAKKAL VILLAGE, RANNY,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.SAJI KURIACHAN
SRI.PAUL ABRAHAM VAKKANAL
SRI.ARUL KUMAR.P

RESPONDENTS:RESPONDENTS/PLAINTIFF & 3RD DEFENDANT

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1. SALY THOMAS, AGED 43 YEARS,
S/O.M.P.THOMAS, VARIKELIL HOUSE,
KARIMKUTTICKAL, PUTHUSSERIMALA MURI, RANNY VILLAGE
PATHANAMTHITTA DISTRICT.

2. JOHN VARGHESE, MEPURATHU HOUSE,
EDAMURI, CHETHACKAL, RANNY VILLAGE,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JOHN BRITTO
SRI.C.A.RAJEEV

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.2155/2006 IN R.S.A.NO.872/2006

24.8.07 DISMISSED SD/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 872 OF 2006

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Dated this the 24th day of August, 2007

JUDGMENT

First defendant in O.S.122/1995 on the file of Munsiff Court, Ranny is the appellant. First respondent is the plaintiff. Second defendant is the third defendant. Second respondent died when the suit was pending before the trial court. First respondent instituted the suit seeking a decree for declaration of title and for recovery of possession. Case of first respondent was that the plaint schedule property belong to her under Ext.A1 settlement deed executed by her husband, the appellant, and she obtained possession of the property on the date of Ext.A1 and since then she has been in possession of the property and while so in June 1990 appellant had gone abroad and the father of the first respondent constructed the building for her and still due to the interference of the relatives of the appellant, she could not

continue to live there and she was compelled to leave the residence and live with her father and in 1990 appellant returned back, but due to difference of opinion between them he deserted her and second defendant mother was only having nominal right in the property. It was contended that after first respondent started residing with her father in 1990, appellant and other respondents trespassed into the plaint schedule property and reduced it into their possession and though appellant cancelled Ext.A1 under Ext.B2, it is not valid and under Ext.B2 appellant did not derive any right and first respondent is therefore entitled to a declaration of title as well as decree for recovery of possession. Appellant along with the deceased second defendant filed a joint written statement admitting that first respondent was his wife. It was contended that after the marriage at different periods between 1983 to 1990 appellant was abroad and during that

period till 1989 first respondent was residing along with second defendant and family and thereafter building was constructed in the plaint schedule property by the appellant and under Ext.A4 settlement deed appellant has title to the plaint schedule property subject to the life intent of second defendant and Ext.A1 settlement deed in favour of first respondent happened to be executed as he was under the belief that she will live with him and though Ext.A1 was executed, first respondent did not obtain possession of the property and Ext.A1 did not come into effect and on 25.11.1990 when appellant returned back from abroad first respondent and the child was not seen in the house and appellant came to know that on 7.1.1990 she had gone along with neighbour Achankunju and is living with him as husband and wife and therefore on 12.9.1990 appellant complained to Sub Inspector of Police, Ranny and Circle Inspector of Police and appellant came to know that the relationship was

broken and he executed Ext.B2 cancellation deed and thereafter he filed O.P.(divorce) 9/94 and for custody of the child O.P.(G & W) No.13/91 and as Ext.A1 was cancelled by executing Ext.B2 on 22.6.1991, first respondent has no title to the property and she is not entitled to the decree for declaration or recovery of possession sought for. Learned Munsiff on the evidence of Pws.1 to 3, Dws.1 to 4, Exts.A1 to A4 and Exts.B1 to B4 granted a decree for declaration of title and recovery of possession. Appellant challenged the decree and judgment before District Court, Pathanamthitta in A.S.93/98. Learned District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. The argument of learned counsel appearing for appellant is that Ext.A1 is not a gift deed as

interpreted by the courts below, but is only a settlement deed as provided under section 2 (q) of Kerala Stamp Act and as first respondent eloped with a neighbour and did not fulfil the hopes of appellant, he was compelled to execute Ext.B2 cancellation deed and therefore under Ext.A1 first respondent cannot claim any title to the property. It was argued that courts below should have found on the evidence that Ext.A1 settlement deed did not come into effect and was not acted upon and accepted and first respondent did not obtain possession of the property at all and therefore findings of the courts below are to be set aside.

4. On hearing the learned counsel I do not find any substantial question of law involved in the appeal.

5. Though it was argued that Ext.A1 is not a gift deed, except the nomenclature of the document as a settlement deed, it is an outright gift deed, as rightly found by the courts below. Learned

Munsiff and learned District Judge on appreciation of evidence, found that Ext.A1 gift deed was acted upon and accepted. That factual finding cannot be interfered by reappreciating the evidence in exercise of the powers of this court under section 100 of CPC. Once Ext.A1 gift deed was accepted and acted upon, by executing Ext.B2, the gift deed cannot be cancelled and by such cancellation appellant is not entitled to dispute the title of the first respondent or claim any title. In such circumstance, I find no reason to interfere with the decree and judgment of the courts below. Appeal is dismissed.

Learned counsel appearing for appellant then argued that first appellant court did not rule out the possibility of the construction of the building in the plaint schedule property, at the expense of the appellant and therefore appellant is to be granted liberty to realise the amount so spent. It is made clear that if appellant has constructed the

building or contributed the amount for construction of the building, the decree granted in suit will not bar appellant from claiming the amount, if he otherwise eligible.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006